

Date: November 29, 1994

Case No. 92-SCA-65

In the Matter of

U.S. DEPARTMENT OF LABOR

Plaintiff

v.

ALVIN ALLEN COYNE, D/B/A
FARMER'S TRUCKING COMPANY

Respondent

APPEARANCES:

JOSEPH B. LUCKETT, Esquire
For the Plaintiff

RALPH I. LAWSON, Esquire
CLARENCE COCHRAN, Esquire
BRUCE A. SPANNER, Esquire (on brief)
For the Respondents

BEFORE: ROBERT L. HILLYARD
Administrative Law Judge

DECISION AND ORDER

This proceeding arises under the provisions of the McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. §351 et seq) (hereinafter "the Act"), and the Regulations issued thereunder at 29 C.F.R. Part 4.

I. STATEMENT OF THE CASE

On June 18, 1992, Bobbye D. Spears, Regional Solicitor of the United States Department of Labor, filed a Complaint against Alvin Allen Coyne d/b/a Farmer's Trucking Company (hereinafter "Respondent"), alleging violations of the Service Contract Act, 41 U.S.C.

353(a), 29 C.F.R. Parts 4, 6 and 18 (ALJX 1).¹ The Complaint alleges violations of the minimum monetary wage requirements, a failure to pay fringe benefits, and a failure to make and maintain accurate records as required by the Act. The Respondent filed its Answer on July 22, 1992. The case was referred to the Office of Administrative Law Judges on August 25, 1992.

Pursuant to notice, a formal hearing was held before Administrative Law Judge Robert L. Hillyard on August 24-26, 1993, in Dyersburg, Tennessee, at which time the parties were afforded full opportunity to be heard, to adduce evidence, and to examine and cross examine the witnesses.

The findings and conclusions which follow are based upon my observation of the appearance and demeanor of the witnesses who testified at the hearing, and upon a careful analysis of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent case law.

II. ISSUES

A. Whether the Respondent violated the Act by failing:

- (1) to pay employees minimum monetary wages, and
- (2) to furnish employees fringe benefits, and
- (3) to make and maintain accurate records of the number of daily and weekly hours worked by each employee.

B. Whether "unusual circumstances" exist such as to relieve the Respondent from the ineligibility list requirements imposed by §5(a) of the Act.

The Plaintiff originally assessed a fine of \$19,895.82 against the Respondent. This amount was reduced when an employee whom the Plaintiff alleged was owed \$25.04 submitted an affidavit stating that Respondent did not owe him this money (ALJX 1). In addition, in its post hearing brief, the Plaintiff withdrew contestation of \$4,151.54 in back wages (GPHB at 20). This reduces the total amount alleged due to \$15,719.24. The breakdown of money owed is as follows:

Williard Allison

\$ 758.57

¹ In this decision, "ALJX" refers to the Administrative Law Judge's Exhibits, "GX" refers to the Government's Exhibits, "RX" refers to the Respondent's Exhibits, "GPHB" refers to the Government's post-hearing brief, "RPHB" refers to the Respondent's post-hearing brief and "Tr." refers to the transcript of the hearing.

Timothy Ashcraft	452.59
Johnny Dean	2,311.05
Ronald Harrison	325.13
Curtis Jones, Jr.	2,309.59
Malcolm Lanier	61.44
Claude Marbrey	1,963.33
David Pierce	2,133.35
Ruth Taylor	4,323.49
Charlene Williams Robinson	1,080.70
Total	\$15,719.24

III. STIPULATIONS

1. Respondent, Alvin Allen Coyne, d/b/a Farmer's Trucking Company, is and at all times material to this case, had a place of business at Route 1, Tiptonville, Tennessee, and was engaged in business as a mail hauling contractor.

2. The following contract, in the amount in excess of \$2,500.00, was awarded Respondent by the government of the United States or agency or instrumentality thereof:

<u>Contract No.</u>	<u>Periods Covered</u>	<u>U.S. Agency</u>
38093	7/1/84 - 6/30/88 7/1/88 - 6/30/92	U.S. Postal Service

This contract, at all times pertinent hereto, was performed in the United States through the use of service employees, within the meaning of §8(b) of the Act and, therefore, was covered by and subject to the Act.

IV. BACKGROUND

A. Investigation

Wallace Butler Mills, a Wage and Hour Inspector for the Department of Labor, conducted the investigation. The investigation was prompted by allegations that Farmer's Trucking Company was underpaying their employees for hours worked, holidays, vacations and training runs. It is alleged that employees were not compensated for additional duties associated with the running of their routes, including loading/unloading mail, sorting mail, inspecting vehicles, and picking up and dropping off vehicles. Instead, Plaintiff alleges that the Respondent paid his employees for only the scheduled route driving times and instructed them to put those

times on their time sheets as a representation of hours worked.² The Plaintiff also alleges that the Respondent erroneously calculated holiday pay, resulting in underpayments to employees. Also, Plaintiff alleges that certain employees did not receive earned vacation pay. Finally, the Plaintiff alleges that the Respondent failed to pay some employees for training sessions. The investigation entailed reviewing the Respondent's payroll and time records and interviewing employees (Tr. 337).

B. Description of Mail Routes and Summary of Witness Testimony

The contract consisted of five routes³ and involved hauling mail for the U.S. Postal Service. The following is a description of each route, summaries of the testimonies from the drivers of the routes, and a synopsis of the Wage and Hour investigation relating to the running of the routes.

1. EXPRESS MAIL ROUTE

The Express Mail route was scheduled to begin in Memphis, Tennessee, at 10:00 a.m., and had eight intervening stops before arriving in Union City, Tennessee, at 1:35 p.m. The return trip began at 2:00 p.m., had six intervening stops, and was scheduled to arrive back in Memphis at 5:35 p.m. The Route ran daily except Sundays and holidays. A pickup truck was used on the Route (GX 3). The total scheduled running time for the Route was seven hours and ten minutes.

Timothy Ashcraft was one of the drivers of the Express Route. He testified that he picked up the truck between 9:30 and 9:35 a.m., and started loading it with mail at 9:45 a.m. He arrived in Union City around 1:30 p.m., took lunch, and departed back for Memphis at 2:00 p.m. He arrived back at the Memphis Air Mail Facility at approximately 5:45 or 5:50 p.m. The total average time it took him to complete the route was seven hours and thirty minutes. He testified that the Respondent instructed him to fill out his time sheets to match the scheduled route times - 10:00 a.m.

² When discussing hours logged on time sheets, I refer to scheduled route time and actual running time. Scheduled route time is the pre-determined time it should take a driver to run a route from the departure gate to the arrival gate. Scheduled route time does not include the time needed to load/unload trucks, inspect vehicles, etc. Actual running time is the total amount of time it takes the driver to run the route once he begins to work. Actual running time includes the time needed to load/unload trucks, inspect vehicles, etc.

³ An additional route, Brighton Route, was added on March 27, 1989. The Brighton Route split Route 21 B, reducing its running time.

to 1:35 p.m. and from 2:00 p.m. to 5:35 p.m. He stated that his paycheck was delayed when he listed his actual hours worked rather than scheduled times on his time sheet. Mr. Ashcraft also stated that the Respondent owes him for an additional two hours per round trip for a two week period when he was required to detour around a collapsed bridge (Tr. 36). Respondent claims that he did pay Mr. Ashcraft for that time, submitting a check cashed by Mr. Ashcraft representing increased pay for two days (RX 7). Mr. Ashcraft stopped working for the Respondent in August of 1990 (Tr. 38).

Wage and Hour investigator Mills determined that Mr. Ashcraft was paid for seven hours on a route that took him seven and one-half hours to complete (Tr. 365-66). Mr. Mills also determined that Mr. Ashcraft was entitled to holiday pay (Tr. 366). He based his calculations on the post office schedule of hours of routes/times and interviews with employees of Farmer's Trucking Company. (Tr. 367). Based on time worked from January, 1989 to August, 1989, Mr. Mills determined that Respondent owes Mr. Ashcraft \$452.59 (GX 24, 38).

Charlene Denise (Jones) Robinson worked for the Respondent from 1984 to 1987, principally driving the Express Route. She testified that she usually arrived at 9:30 a.m. to load the truck, which took her approximately twenty to thirty minutes. She arrived in Union City around 1:45 p.m. and spent twenty minutes unloading the mail. She arrived back in Memphis at 5:30 p.m. and spent approximately thirty to forty minutes unloading the mail. The average time that it took her to complete her route was eight hours and thirty-five minutes. Ms. Jones received \$60 for each round trip run (Tr. 76). Ms. Jones alleged that the Respondent wanted her to sign a statement verifying that the Express Route could be run in six hours, but she refused to sign the statement (Tr. 78). On cross examination, Ms. Jones acknowledged that she did not have any documentation chronicling her trip time, and never complained to the Respondent about being owed additional money (Tr. 78-80).

Wage and Hour investigator Mills determined that Ms. Robinson was paid for six hours on a route that took seven and one-half hours to complete (Tr. 373). Adding in holiday pay, Mr. Mills determined that the Respondent owes Ms. Robinson back wages of \$1,090.70, for the period September 3, 1987 to November 12, 1987 (GX 25, 38).

Ruth Taylor worked for the Respondent from 1985 to 1987, running the Express Mail Route. She testified that she arrived at 9:45 a.m. to load the truck. After arriving in Union City, usually on time, she spent fifteen minutes unloading the truck. She usually did not arrive back into Memphis until 5:50 p.m. - 6:00 p.m., and took fifteen to twenty five minutes unloading the mail (Tr. 86). The total time that it took Ms. Taylor to run the Route was eight hours and fifteen minutes. Most of the additional time was spent loading and unloading the mail (Tr. 91). She testified

that she only put down the scheduled hours on her time sheet because the Respondent told her that she would not be paid for additional hours (Tr. 105). Plaintiff introduced evidence showing that Ms. Taylor was given vacation pay for a week in which she actually worked (Tr. 107, 361, GX 13, 14).

Wage and Hour Inspector Mills determined, based on what Ms. Taylor told him, that she took an average of seven and one-half hours to run the route. Payroll records show that over a two year period she was paid for six hours. Adding in holiday pay, Mr. Mills determined that the Respondent owes Ms. Taylor back wages of \$4,059.00, for the period September 24, 1987 to January 19, 1989 (GX 22, 38).

Mr. Mills also assessed back wages against the Respondent for Express Run driver Ronald Harrison. Mr. Mills determined that Mr. Harrison was paid for seven hours on a route that on the average took seven and one-half hours to complete. Mr. Harrison did not testify and Mr. Mills based his calculations on payroll time records and employee interviews (Tr. 378). Adding in holiday pay, Mr. Mills found that the Respondent owes Mr. Harrison back wages of \$325.13, for the period from June 30, 1988 to November 10, 1988 (GX 26, 38).

Angela Taylor testified on behalf of the Respondent regarding the Express Route. She stated that she was able to make the Express run in seven and one-half hours, and that included approximately ten minutes for loading and unloading mail, which was "part of the job." (Tr. 534). She testified that the Respondent never told her how to fill out her time sheets as they were "self explanatory." (Tr. 540).

2. ROUTE 21 A

Route 21 A was scheduled to begin in Union City, Tennessee, at 6:30 p.m., and had six intervening stops before arriving at the Memphis General Mail Facility (GMF) at 10:00 p.m. There was a layover of three and a half hours. The Route was then scheduled to leave Memphis at 1:30 a.m., make five intervening stops, and arrive back in Union City at 5:00 a.m. The total scheduled time to complete the Route was seven hours. Route 21 A was run with a tractor trailer and was run daily except Saturdays, Sundays, and days before holidays, which included New Years, Independence Day, Labor Day, Thanksgiving and Christmas (GX 3).

Claude Marbre worked for the Respondent from 1983-89, running Route 21 A in 1988-89. He testified that he picked the truck up at 6:15 p.m. to allow him time to drive it to the Post Office, inspect it, and load it with mail. After arriving in Memphis, it took him approximately thirty minutes to unload the mail. It then took him approximately ten minutes to prepare the truck for its return trip to Union City (Tr. 54-58). He usually arrived back in Union City

at 5:00 p.m., and took ten minutes to unload the mail and fifteen minutes to drive the truck back to the lot. On average, it took him eight hours and ten minutes to make the round trip. He testified that he was paid only for the scheduled hours on the Route (Tr. 62), and did not attempt to submit actual time sheets. He acknowledged that the Respondent never told him how to fill out his time sheets (Tr. 70).

Wage and Hour Inspector Mills determined, based on payroll records and interviews, that Mr. Marbrey's pay varied from eight to seven hours per round trip (Tr. 410-11). For the weeks that Mr. Marbrey was paid for seven hours, Mr. Mills added fifteen minutes per round trip (Tr. 411). Including holiday and vacation pay, Mr. Mills determined that the Respondent owes Mr. Marbrey back wages of \$2,173.05, for the period September 3, 1987 to February 9, 1989 (GX 30, 38).

Johnny Dean began working for the Respondent in 1984 or 1985, running Route 21 A. He testified that he spent five minutes picking up the truck and driving it to the Post Office. Before beginning the run, he took approximately ten minutes to inspect the truck, which consisted of checking the tires, oil and air brakes. He usually arrived in Memphis on time and took ten minutes to unload the truck (Tr. 118). Before departing for Union City, he arrived ten minutes early to help load the truck (Tr. 120). He usually arrived back in Union City at the scheduled time - 5:00 p.m. (Tr. 121). He spent five minutes driving the truck back to the lot. On average, it took him seven hours and forty minutes to make the round trip. He testified that the Respondent told him to put down only the actual scheduled route hours on his time sheet and that he would not be paid for additional time inspecting and unloading the truck (Tr. 129, GX 15).

Wage and Hour Inspector Mills added fifteen minutes to each of Mr. Dean's round trips in computing his back wages. Adding in holiday and vacation pay, Mr. Mills determined that the Respondent owes Mr. Dean back wages of \$2,333.69, for the period September 3, 1987 to August 17, 1989 (GX 38, Tr. 421-26).

James Rayburn Hawkins testified on behalf of the Respondent regarding Route 21 A. He stated that he was able to run Route 21 A in the scheduled period of time, and that included handling mail on occasion (Tr. 460). Upon being asked whether the Respondent ever told him how to fill out his time sheets, Mr. Hawkins stated: "[t]hey gave me the scheduled time of the runs of when they had to be run and I filled out my payroll accordingly." (Tr. 462).

3. ROUTE 21 B

Route 21 B was scheduled to begin in Newbern, Tennessee, at 5:15 p.m., and had eleven intervening stops before arriving in Memphis, Tennessee, at 9:00 p.m. The return trip began at 4:14

a.m. the next morning, and had eleven intervening stops before arriving in Newbern at 7:40 a.m. Route 21 B was made with a twenty-two foot Bob truck and was run daily except for New Years, Independence Day, Labor Day, Thanksgiving and Christmas holidays. The total scheduled time for a round trip was seven hours and ten minutes (GX 3). This route split on March 27, 1989, and the hours were reduced to five hours and fifteen minutes per round trip (GX 41).

William David Pierce worked for the Respondent from 1987 to 1990, and was one of the drivers of Route 21 B. Mr. Pierce testified that he spent approximately twenty-five minutes prior to departure inspecting the truck and loading the mail. He usually arrived in Memphis on schedule but spent an additional fifteen minutes unloading the truck. He usually arrived back in Newbern on time but again spent an additional fifteen minutes unloading the truck (Tr. 140-46). Mr. Pierce testified that it took him an average of eight hours to make the round trip, but one of his time records shows eight and one-half hours (GX 16). Mr. Pierce also testified that the Respondent did not pay him for late slips (Tr. 156).⁴ Mr. Pierce alleges that the Respondent fired him when he put down the actual hours worked on his time sheet rather than the scheduled hours (Tr. 156-57, GX 16).

Based on the Respondent's payroll records and employee interviews, Wage and Hour inspector Mills determined that the route took eight and one-half hours to complete and Mr. Pierce was paid for only seven and one-half hours, and on occasion eight hours (Tr. 380, GX 27). Including non-paid detour time, holiday and vacation pay, Mr. Mills determined that the Respondent owes Mr. Pierce back wages of \$2,135.87, for the period from September 3, 1987 to August 17, 1989 (GX 27, 38).⁵

Claude Curtis Jones, Jr. worked for the Respondent from August of 1987 to January of 1990, primarily running Route 21 B. His routine included spending fifteen minutes prior to departure inspecting and loading the truck. After arriving in Memphis, he spent fifteen to twenty minutes unloading the truck (Tr. 170). For his departure back to Newbern, he testified that on average he arrived at the facility at 3:00 a.m. to load the truck for the 4:15 a.m. departure. He usually arrived in Newbern on time and would not spend much time unloading the truck (2-3 minutes). He stated

⁴ The post office issues a late slip to the driver when they delay the driver. If the driver needs additional time to complete his route, the late slip is redeemable for additional compensation. After redemption by the company, the money is passed along to the employee.

⁵ Included in this amount were five World Color press runs (Tr. 386-87).

that he was only paid for eight hours, so he put eight hours down on his time sheet (GX 19, Tr. 178-79). On average, a round trip run took him from eight hours and forty-five minutes to nine hours to complete (GX 19).

Wage and Hour Inspector Mills, basing his calculations on eight and one-half hours for a round trip, determined that the Respondent owes Mr. Jones back wages of \$2,381.22, for the period from September 3, 1987 to August 17, 1989 (GX 29, 38).

Jonathan DeWayne Heywood Hutching worked for the Respondent from December of 1989 to April of 1991, primarily running Route 21 B. He testified that he usually arrived at 4:45 p.m. to prepare the truck for the 5:15 p.m. departure time. On the trip back he usually arrived at 3:00 a.m. to sort the mail. Mr. Hutching testified that he was paid for seven hours of work (Tr. 194), but worked, according to submitted documents, seven hours and forty-five minutes (GX 39). He also testified that he was not paid for three days of training time (Tr. 195).

Wage and Hour Inspector Mills determined that the Respondent owes Mr. Hutching \$2,989.05 for unpaid training time and uncompensated hours worked for the period from December 1, 1989 to March 31, 1991 (GX 39, Tr. 445). This figure was not, however, included in the amount alleged due in the Plaintiff's complaint (GX 38).

Gary Michael Ball worked for the Respondent from June, 1990 to February, 1991, running Route 21 B. He testified that he usually spent fifteen minutes prior to the run checking the truck and loading the mail, and that he usually arrived in Memphis on time. He arrived at 3:45 a.m. to prepare for the 4:30 a.m. departure time to Newbern, and usually arrived about five to ten minutes late (Tr. 209). He also alleged that the Respondent did not pay him for three days of training, or for mechanical breakdowns of equipment (Tr. 212-16).

Wage and Hour Inspector Mills determined that the Respondent owes Mr. Ball \$2,101.44 for uncompensated hours worked and training pay (Tr. 443, GX 39). This figure was not, however, included in the amount alleged due in the Plaintiff's complaint (GX 38).

4. WORLD COLOR PRESS

The World Color Press Run ran from Dyersburg, Tennessee, to Memphis, Tennessee, and return to Dyersburg. A round trip was scheduled to be completed in four hours. Drivers made the World Color Press Run with a tractor trailer truck and it was run daily except for Saturdays and Sundays, and the New Years, Independence Day, Labor Day, Thanksgiving and Christmas holidays (GX 3).

Jimmy Dale Connolly was one of the drivers of the World Color Press Run. His route was scheduled to begin at 11:45 p.m. in

Dyersburg and end in Memphis at 1:45 a.m. The return trip was scheduled to begin at 3:30 a.m. and arrive in Dyersburg at 5:30 a.m. These were the hours that Mr. Connelly was instructed to put on his time sheet. Mr. Connelly testified that he usually arrived at work between 11:00 and 11:15 p.m. to allow him time to inspect the truck and drive it over to World Color Press. He usually left World Color Press at 11:45 p.m. and arrived in Memphis at 1:45 a.m. (Tr. 253). He usually arrived back in Dyersburg at 6:00 a.m., and then drove the truck back to the lot - a drive of approximately fifteen minutes. Mr. Connelly stated that after he threatened to quit for not being fully compensated for hours worked, the Respondent began paying him for five hours of work (Tr. 281).

Wage and Hour Inspector Mills calculated Mr. Connelly's lost wages to be \$6,958.39, for the period March 1, 1990 to August 31, 1992 (GX 39). This figure was not, however, included in the amount alleged due in the Plaintiff's complaint (GX 38).

The World Color Press Run was also driven by Claude Marbrey. He testified that the run took him an additional five to ten minutes each way, making his total round trip time four hours and fifteen minutes (Tr. 58-59). Wage and Hour Inspector Mills included this run when calculating wages due, previously discussed earlier under Route 21 A.

Johnny Dean also drove the World Color Press Run. He testified that he spent an additional ten minutes each way inspecting, loading/unloading and unhooking the trailer. His total round trip time was four hours and twenty minutes. Wage and Hour Inspector Mills included this run when calculating wages due, previously discussed earlier under Route 21 A.

Raymond Seratt also occasionally drove the World Color Press Run. He testified that on top of the scheduled four hours, he spent an additional fifteen to twenty minutes picking up the truck and fifteen to twenty minutes dropping off the truck (Tr. 242).

Mr. Jones also drove the World Color Press Run. He testified that he was able to complete the run in the scheduled four hours (Tr. 172-75). The Respondent introduced a route survey showing that a single leg of the run could be completed in one hour and forty-six minutes (RX 6).

Mr. Mills also assessed back wages against the Respondent for World Color Press Run driver Williard Allison. Mr. Mills determined that Mr. Allison was paid for four hours on a route that on average took him four and one-quarter hours to complete. Mr. Allison did not testify and Mr. Mills based his calculations on payroll/time records and employee interviews (Tr. 437). Adding in holiday and vacation pay, Mr. Mills found that the Respondent owes Mr. Allison back wages of \$758.57, for the period March 31, 1988 to November 10, 1988 (GX 35, 38).

Mr. Mills also assessed back wages against the Respondent for World Color Press Run driver Malcolm Lanier. Mr. Mills determined that Mr. Lanier was paid for four hours on a route that on average took him four and one-half hours to complete. Mr. Lanier did not testify and Mr. Mills based his calculations on payroll/time records and employee interviews (Tr. 36, 38). Adding in holiday and vacation pay, Mr. Mills found that the Respondent owes Mr. Lanier back wages of \$61.44, for the period March 31, 1988 to April 21, 1988 (GX 36, 38).

Mr. Mills also assessed back wages against the Respondent for World Color Press run driver Dennis Tisdale. Mr. Mills determined that Mr. Tisdale was paid for four hours on a route that on average took him four hours and fifteen minutes to complete. Mr. Tisdale did not testify and Mr. Mills based his calculations on payroll/time records and employee interviews (Tr. 438). Adding in holiday and vacation pay, Mr. Mills found that the Respondent owes Mr. Tisdale back wages of \$25.04, for work on August 17, 1989 (GX 37, 38).⁶

5. SUNDAY AND HOLIDAY ROUTE

One additional route discussed at the hearing, not identified by name, was run on Sundays and holidays. The route was scheduled to begin in Newbern, Tennessee, at 7:20 p.m., had four intervening stops, and was scheduled to arrive at the Memphis GMF at 10:40 p.m. After a three hour layover, the route began again at 1:30 a.m., and was scheduled to arrive back in Newbern at 4:20 a.m. Drivers made this run with a tractor trailer. The total scheduled time for this route was six hours and ten minutes (GX 3).

Raymond Seratt began working for the Respondent on Labor Day 1990, running the Sunday and holiday route. He testified that he began the route at 7:00 p.m. by inspecting and loading the truck (Tr. 234-35). He usually arrived in Memphis at 10:30 p.m. and spent fifteen to twenty minutes unloading the truck. He arrived back at the facility at approximately 1:05 a.m. to assist in the loading and breaking down of the mail so that he would be ready to depart at 1:30 a.m. for Newbern (Tr. 236). He usually arrived in Newbern between 4:30-4:45 a.m. (Tr. 237). For three months the truck was kept at a different location which required Mr. Seratt to drive an additional twenty minutes (Tr. 238). Mr. Seratt testified that the Respondent instructed him to put down working hours of 7:20 p.m. to 10:30 p.m. and 1:30 a.m. to 4:20 a.m., and he was only paid for those hours (Tr. 239). He also alleged that the Respondent did not pay him for three days of training (Tr. 240).

⁶ Mr. Tisdale submitted an affidavit stating that the Respondent does not owe him for back wages (ALJX 19). Accordingly, this amount was subtracted from the total back wages due.

Wage and Hour Inspector Mills determined that the Respondent owes Mr. Seratt back wages of \$3,283.56. This figure included uncompensated work hours and training pay (GX 39). This figure was not, however, included in the amount alleged due in the Plaintiff's complaint (GX 38).

Michael Wayne Haynes began working for the Respondent in July of 1992, and worked for approximately two to three months. His route was scheduled to leave Newbern at 8:30 p.m. and arrive in Memphis at 10:30 p.m. He departed Memphis at 1:30 a.m. and arrived back in Newbern at 5:30 a.m. (Tr. 301-03). He spent additional time before and after the route loading and unloading the mail (Tr. 302). He testified that the Respondent instructed him to put down the scheduled times on his time sheet and was not paid when he put down his actual times (Tr. 303). He also stated that he was not paid for two training runs (Tr. 299).

Wage and Hour Inspector Mills determined that the Respondent owes Mr. Haynes back wages of \$1,051.68 (GX 39). This figure was based on uncompensated work hours and training pay (GX 39). This figure was not, however, included in the amount alleged due in the Plaintiff's complaint (GX 38).

C. Prior Violation

The Plaintiff introduced testimony of John Michael Simmons, a Wage and Hour investigator who investigated the Respondent from 1985 to 1987. Mr. Simmons' investigation uncovered numerous violations, including failure to keep time records; failure to adequately pay holiday and vacation pay; and failure to pay earned wages (Tr. 315-18). These violations resulted in a fine of \$25,742.54, which was paid by the Respondent (GX 21). Mr. Simmons also had numerous discussions with the Respondent designed to ensure future compliance with the Act (Tr. 320). Specifically, he told the Respondent that he was required to compensate his employees for time spent loading and unloading mail, breakdown delays, inspection of the truck, and time spent waiting to be loaded and unloaded (Tr. 321). Mr. Simmons testified that he told the Respondent that he had to pay the employees for the time spent loading and unloading the trucks, and could not limit payment to the scheduled route hours (Tr. 322).

Mr. Simmons' testimony was supported by Albert Markham, the Respondent's accountant, who was present at many of the conferences. Mr. Markham testified that he helped design the time cards presently used by the Respondent's employees (Tr. 591). Mr. Markham was also present during many of the Respondent's meetings with Mr. Mills. His testimony supported Mr. Mills' account of his meetings with the Respondent (Tr. 593-95).

The Respondent, Alvin Coyne, disputed the Plaintiff's allegations. He stated that after his meeting with Mr. Simmons he

developed time cards, but never ordered his employees to put down only the scheduled hours (Tr. 620). He noted that he had personally made each of the runs and was able to complete them within the scheduled times (Tr. 626-27). Respondent's testimony also included a discussion on the training runs. He explained that the runs were not training runs, but rather runs designed to give potential employees an understanding of the job to assist them in deciding whether or not to work for the Company. He stated that people frequently decided not to take the job after traveling the routes (Tr. 634-35). On cross examination, the Respondent acknowledged loading and unloading mail on the routes, and never accompanying drivers on their routes (Tr. 641-42).

D. Other Testimony

Penny Coyne, the wife of the Respondent and the Company bookkeeper, disputed claims that the employees were only paid for the scheduled hours. She testified that she paid the employees according to the hours that they turned in on their time sheets (Tr. 602). She stated that none of the employees complained to her about the manner in which they were paid. Id. She said that the Company did not begin paying fringe benefits until 1989 because Mr. Simmons, the previous Wage and Hour investigator, told them they were not responsible for fringe benefits payments (Tr. 603). She determined that the Company owed \$1,900.00 in fringe benefits and offered to pay the amount, but testified that Mr. Mills was not interested in partial payment (Tr. 604). She commented that she never observed the Respondent instructing the employees on how to fill out their time sheets (Tr. 609).

Charles David Hooper also testified on behalf of Respondent. He stated that he spent the majority of his time tending to the Respondent's equipment, but that he had also made most of the runs (Tr. 542). He said he was able to complete the runs within the scheduled period of time and was never told by the Respondent how to fill out his time sheet (Tr. 547). Mr. Hooper is the brother-in-law of the Respondent (Tr. 548). David Coyne, the brother of the Respondent, also testified that he was able to complete the routes within the scheduled times (Tr. 575). He said he was not required to handle the mail (Tr. 575).

James Alsobrook, a retired postal service worker who previously monitored the Respondent's contract, testified on behalf of the Respondent (Tr. 552). He stated that the Respondent's contract allotted additional time for the loading and unloading of mail - usually five to ten minutes (Tr. 554). He said that during his tenure the routes were always run properly and seldom experienced delays (Tr. 556-57). He never noticed any problems with the time sheets (Tr. 560).

The Plaintiff introduced Cathy Nash as a rebuttal witness. Ms. Nash is a Network Specialist for the U.S. Postal Department.

Her duties include supervising and administering highway contract routes for contract compliance, determining service requirements and observing contract operations, one of which was Farmer's Trucking (Tr. 648-49). She testified that postal contract bids are supposed to incorporate training costs in the bottom line of the cost statement (Tr. 650). The contracts also require that the drivers assist in loading and unloading the mail. Id. Her job requires her to follow drivers on their routes, and she testified that she observed drivers for Farmer's Trucking loading and unloading mail for periods of time ranging from twenty to forty-five minutes (Tr. 654-55). She stated that contract holders are paid additional money to compensate for loading and unloading time, which is not included in the scheduled times. This was evidenced by the following exchange:

Q. [Judge Hillyard] You are saying the contract allocates a total of seven hours and five minutes for loading and unloading time for the total route daily?

A. [Ms. Nash] That's correct. Over and above what the operational hours require on the statement of the schedule.

Q. [Judge Hillyard] Is there any allocation of that time according to the different trips, or is that up to the driver or to the company?

A. [Ms. Nash] It was up to the contracting official to determine that time prior to renewal of the contract (Tr. 663).

The Plaintiff introduced the Respondent's postal service contract which allocated a total of seven hours and five minutes for loading and unloading time for all of the routes (GX 1). Ms. Nash testified that this time is usually broken up into intervals of fifteen and thirty minutes - depending on the route (Tr. 663-64).

V. FINDINGS OF FACT

Based on my review of the record, summarized above, I make the following credibility and factual findings:

1. The drivers were required to load and unload the mail when running their routes.

2. I find the drivers' testimony to be credible because it is uniformly consistent and supported by the time sheets. The testimony establishes that additional time was needed beyond the scheduled hours to load and unload mail, and the Respondent only paid the Employees for the scheduled route hours. The testimony also establishes that the Respondent instructed the Employees to put down the scheduled route times on their time sheets rather than the actual running times.

3. I find that the testimony of the Respondent's witnesses is less credible. These witnesses are either currently employed by the Respondent or are relatives of the Respondent, and the majority of the evidence contradicts their testimony.

4. The postal service contract paid the Respondent an additional seven and one-half hours per day, beyond the scheduled hours, to cover the loading and unloading time involved with running the routes. Respondent was aware of this provision.

5. The Respondent did not adequately compensate the employees for holiday and vacation pay and training runs.

6. Respondent was aware of the Act's requirements addressing the payment of minimum monetary wages and fringe benefits, as well as the importance of keeping accurate records.

7. Respondent previously violated the Act in 1987. Violations stemmed from the Respondent's failure to: (1) keep time records; (2) pay earned wages; and (3) fully compensate for holiday and vacation benefits. These violations resulted in a fine of \$25,742.54, which Respondent paid in 1988.

VI. DISCUSSION AND CONCLUSIONS OF LAW

A. Respondent's Responsibility to Make and Maintain Accurate Records of the Number of Daily and Weekly Hours Worked by Each Employee

The record keeping requirements under the Act are found at 29 C.F.R. §§4.6(g) and 4.185. The record keeping provisions require a respondent to maintain: (1) [t]he correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee; (2) the number of daily and weekly hours so worked by each employee. The regulation further states that "[f]ailure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations. . . ." 29 C.F.R. §4.6(g)(ii),(iii),(3); see also Kentron Hawaii Ltd. v. Warner, 480 F.2d 1166, 1179 n.40 (D.C. Cir. 1973); Darell E. Yates, SCA 171 (June 13, 1974).

Respondent violated the record keeping provisions of the Act by failing to keep accurate time sheets, which were not a true representation of the actual hours worked by the employees. Almost unanimously, the employee drivers testified that the Respondent instructed them to put down the scheduled route hours on their time sheets rather than the actual running times. Timothy Ashcraft testified that the Respondent instructed him to fill out the time sheets to match the scheduled route hours (Tr. 31-32). Ruth Taylor testified that the Respondent only paid her for the scheduled route

hours, and those were the only hours she put down on her time sheet (Tr. 105). Claude Marbrey testified that he only put down the scheduled route hours on his time sheets and did not attempt to record his actual running times (Tr. 62). Johnny Dean testified that the Respondent told him to put down only the scheduled route hours on his time sheet and that he would not be paid for additional time (Tr. 129). Raymond Seratt testified that the Respondent instructed him to put down the scheduled working hours, and he was only paid for those hours (Tr. 239). Michael Haynes testified that the Respondent instructed him to put down the scheduled times on his time sheet and was not paid when he put down his actual times (Tr. 303). William Pierce alleged that the Respondent fired him when he put down the actual hours worked on his time sheet rather than the scheduled hours (Tr. 156-57). Curtis Jones stated that he only put down the scheduled hours on his time sheets (Tr. 178-79). Jimmy Connelly testified that the Respondent instructed him to put down the scheduled hours on his time sheet (Tr. 256).

The employees' testimony is supported by the time records themselves. Respondent denies ever telling his employees to put down the scheduled route hours on their time sheets and states that the times entered on the sheets represent the actual running times. However, the time sheets in the record almost uniformly show the scheduled hours as the actual hours run (GX 5, 7, 8, 10, 11, 13, 15, 16, 19, 33, 34). It is inconceivable that a driver would take exactly the same amount of time each day to make a run, and depart and arrive at exactly the same time for every run. Had the employees been putting down their true running times, then traffic, weather, and other conditions would not allow for the uniformity seen in the time sheets. Furthermore, the record contains time sheets representing actual running times, filled out before the Respondent began instructing the drivers, and they show varying running times (GX 7, 15, 16, 19).

The Respondent introduced the testimony of other drivers to refute the time sheet claims, but their testimony was unconvincing. James Rayburn, when asked whether he was instructed by the Respondent on how to fill out his time sheets responded: "[t]hey gave me the scheduled time of the runs of when they had to be run and I filled out my payroll accordingly." (Tr. 462). Similarly, upon being asked the same question, Angela Taylor said that the time sheets were "self explanatory." (Tr. 540). I find both of these responses evasive and, therefore, unsupportive of the Respondent's contention. Other witnesses testifying that the Respondent did not instruct employees on how to fill out their time sheets included Penny Coyne, the Respondent's wife; Charles Hooper, the Respondent's brother-in-law; and David Coyne, the Respondent's brother. While the nature of their relationship to the Respondent alone is not enough to discredit their testimony, when coupled with the consistent testimony of the drivers and the evasive answers of Mr. Rayburn and Ms. A. Taylor, I find their testimony non-persua-

sive. As such, I find that the Respondent violated the record keeping provisions of the Act by failing to maintain accurate time sheets. Incident to the Respondent's failure to keep adequate time sheets is his failure to pay minimum monetary wages and fringe benefits.

B. Respondent's Responsibility to Pay Employees Minimum Monetary Wages and Furnish Fringe Benefits

The Service Contract Act, 41 U.S.C. Section 351, provides that every contract for services to the United States for an amount in excess of \$2,500 must contain:

(1) A provision specifying the minimum monetary wages to be paid the various classes of service employees in the performance of the contract . . . in accordance with the prevailing rates for such employees in the locality . .

. .

(2) A provision specifying the fringe benefits to be furnished the various classes of service employees engaged in the prevailing performance of the contract . . to be prevailing for such employees in the locality

. . . .

The contract between the Respondent and the United States Post Office includes a form outlining specific responsibilities of contractors under the Service Contract Act which included the requirement that:

Each service employee employed in the performance of this contract . . . shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with wages and fringe benefits determined by the Secretary of Labor . . . as specified in any wage determination attached to this contract. (GX 1).

The regulations promulgated under the Act place an affirmative duty on the contractors to "ensure that its pay practices are in compliance with the Act, and cannot itself resolve questions that arise, but rather must seek advice from the Department of Labor." 29 C.F.R. Section 4.188(b)(4).

1. The Running of the Mail Routes

The Respondent owes back wages for uncompensated work time spent in the running of the mail routes. The Regulations promulgated under the Act require that employees be compensated for "each hour worked in performance of [the] contract," describing hours worked as those hours "in which the employee is suffered or permitted to work . . ." 29 C.F.R. §4.178. The Respondent's postal contract defines on duty time as "that time from which the

driver begins to work or is required to be in readiness to work" (GX 1) (emphasis added). Almost unanimously, the employees testified that part of their duties involved arriving early and staying late to load and unload the mail from the trucks, as well as inspecting the vehicles. See supra Findings of Fact. Indeed, the contract that the Respondent had with the Post Office required drivers to load/unload mail and inspect the vehicles (GX 1). As discussed supra, the employees were not compensated for this additional time beyond the scheduled route hours, which on average amounted to fifteen to thirty minutes per round trip.

That the running of the mail routes required additional time beyond the scheduled route hours is supported by the testimony of Kathy Nash. Ms. Nash, a contract compliance officer with the United States Post Office who monitored the Respondent's contract, testified that the Respondent's contract with the Post Office allocated an additional seven and one-half hours per week, on top of the scheduled route hours, to cover the loading and unloading time involved with running the routes. My review of the record shows that adding fifteen to thirty minutes to each round trip to allow for loading/unloading time, as Mr. Mills did in his investigation, amounts to seven and one-half hours. Therefore, I find that the Respondent did not compensate employees for time spent loading/unloading mail and inspecting vehicles.

Respondent's claim that the routes could be run within the scheduled route times is unfounded. Respondent's post-hearing brief noted that the Respondent's postal service contract had recently been renewed, indicating that the routes had been run within the scheduled hours (RPHB at 2). James Alsobrook, a retired postal service worker who monitored the Respondent's contract, stated that he never issued a deficiency report against the Respondent (RPHB at 5, 19, Tr. 556-57). However, it is not disputed that the routes could be run within the scheduled driving time. It is the time that the employees spent before and after the scheduled driving times, unloading and loading mail and inspecting vehicles, that is in question, and the record is clear that the employees were not compensated for these duties.

2. Fringe Benefits - Holiday and Vacation Pay

Holiday and vacation pay are fringe benefits and must be paid in addition to the minimum wages set forth in the wage determination. 29 C.F.R. §§4.6 and 4.162. Mr. Mills testified as to the proper method of calculating holiday and vacation pay (Tr. 352-53). He noted that the Respondent had been splitting holiday and vacation pay, a practice not allowed under the Act (Tr. 352-53). Respondent acknowledged not properly paying holiday and vacation pay (Tr. 604). Plaintiff also introduced evidence showing that one employee, Ruth Taylor, was given vacation salary for a week in which she actually worked (Tr. 107, 361, GX 13, 14). Therefore, I

find that the Respondent is delinquent in paying holiday and vacation pay.

3. Training Time

Regulations promulgated under the Fair Labor Standards Act (FLSA) are applicable to the Act. 29 C.F.R. §4.178; American Waste Removal Co. v. Donovan, 748 F.2d 1406, 1409 n.1, 1410 n.3 (10th Cir. 1984). Under the FLSA, training hours designed to make employees handle their jobs more effectively are considered to be hours worked and are, therefore, compensable. 29 C.F.R. §785.29. The Respondent did not pay employees for the time they spent accompanying other drivers on the mail runs, familiarizing themselves with the routes (Tr. 195, 212-16, 240, GX 39). Respondent argues that he does not owe wages for these runs because the employees were only applicants at the time, not employees, and only made the runs to see if they were interested in the job (Tr. 634-35, RPHB at 23-24). However, applicants engaged in training activities designed to assist them in assessing their interest in a job are not exempt from minimum monetary requirements where their work nonetheless serves the employer's interest. Wirtz v. Wardlaw, 339 F.2d 785, 787-88 (4th Cir. 1964). In the present case, the Respondent's interest was served by having newly hired employees capable of commencing the runs immediately. Therefore, I find that these runs qualify as training time and are compensable under the Act.

4. Detour Time

Any additional time spent by an employee detouring around impassable roads is compensable. Detour time falls under the "hours worked" provision of the Act, discussed supra. 29 C.F.R. §4.178. In addition, the Respondent's postal service contract mandates the payment of detour time (GX 1). The Plaintiff introduced evidence purporting to show that some employees were not compensated for additional time spent detouring around a collapsed bridge (GX 27, 29). My review of the record shows that one employee was not compensated for this additional time (Tr. 165, GX 27).

C. Calculation of Back Wages Due

I am satisfied that Mr. Mills' back wages calculations, which are based on payroll and time sheet records and employee interviews, fairly represent the money owed by the Respondent. Mr. Mills' calculations are sufficiently explained in his investigative work sheets, which document a well established pattern of underpayment procedures by the Respondent (GX 22, 24, 25, 26, 27, 29, 30, 31, 32, 35, 36, 37, 39). Mr. Mills properly relied on this pattern when estimating back wages in instances where employee interviews were not conducted and payroll and time records were not available.

Areas where Mr. Mills was unable to establish a systematic method of calculation or forced to estimate back wages are minimal and do not discredit the overall calculations. In cases where an employer lacks complete payroll and time sheet records, back wages may be approximated. This situation was addressed by the Supreme Court in Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946), and explained as follows:

The employee bears the burden of proving he performed work for which he was not properly compensated. However, employers have a duty to keep accurate records. If employers do not keep accurate records the employee's burden is extremely difficult. In order to prevent the employee from being penalized by the employer's failure to keep adequate records, the Supreme Court held in Anderson that an employee carries his burden by proving that he has 'in fact performed work for which he was improperly compensated and . . . [producing] sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.' Upon a showing, the burden shifts to the employer to produce evidence of the precise amount of work performed or to negate the reasonableness of the inference drawn from the employee's evidence. If the employer does not rebut the employee's evidence, then damages may be awarded even though the result is only approximate. The employer cannot complain that the damages lack the precision that would have been possible if the employer had kept the records required by law.

Donovan v. Simmons Petroleum Corp., 725 F.2d 83, 85-86 (10th Cir. 1983) (citations omitted) (quoting Anderson, 328 U.S. at 687). It has been held that not all employees need testify in order to be entitled to back wages. Donovan, 725 F.2d at 86.

In the present case, the Respondent's records were such that Mr. Mills was forced to estimate back wages in some areas. This is evidenced by the following exchange:

A. [Mr. Mills] Based on all of the information that I had gathered in such a hodgepodge of -- of pay methods that he used to pay the employees, I wasn't able to establish -- it wasn't adaptable for me to establish any systematic method of -- of computation on violations that I had found and I improvised for some individual employees to arrive at the most accurate results, in my judgment.

Q. [Plaintiff] You referred to a "hodgepodge of pay methods." Could you tell us what you mean by that?

A. [Mr. Mills] During the first several weeks of -- of the investigation period, the only records that [the Respondent]

had available was payroll sheets that had the total number of -- number of trips, the amounts paid per trip and the total amounts paid per week. . . . I couldn't tell what the correct hourly rate was, if there was an hourly rate; what the amounts of money paid, what kind of hours worked in that situation.

As discussed supra, Mr. Mills unearthed a pattern with which to base his calculations of back wages in instances where payroll and time records were not available. Furthermore, in situations where Mr. Mills' calculations were suspect, the Plaintiff did not include them in his request for back wages.⁷ Therefore, I find that in the areas where Mr. Mills was unable to avail himself to payroll and time records, his computations of hours, wages and benefits are supported by a preponderance of the evidence as required by the Act, and the approximation of damages is reasonable.

The record also contains computation sheets for other employees showing additional back wages due, beyond the total amount of \$15,719.41 alleged in the complaint (GX 39). Many of these employees testified at the hearing in support of the claims (Tr. 195, 212-16, 240, 281, 299-304). However, the Plaintiff did not include these employees in any submitted documents listing employees due back wages. This includes the Plaintiff's complaint, amended complaint, Response to Pre-hearing Order and post-hearing brief. As such, these computation sheets and supporting testimony will only be weighed as evidence supporting the Respondent's pattern of underpayment methods and will not be included in the final order for back wages due.

D. Debarment

The remaining issue in this case is whether "unusual circumstances" exist to excuse the Respondent's violation of failing to pay the prevailing wage and fringe benefits to employees subject to the provisions of the Service Contract Act so as to avoid the

⁷ Not included in the request for back wages were hours worked by Jimmy Connelly (Tr. 286-87) and Michael Haynes (Tr. 500). A dispute also arose over whether Timothy Ashcraft was fully compensated for detour time. The Respondent introduced two cancelled checks, made out to and signed by Mr. Ashcraft, representing two days of detour pay (RX 7). Mr. Ashcraft claimed that he detoured around the collapsed bridge for two weeks, however (Tr. 36). Faced with this discrepancy, Mr. Mills did not include detour time in Mr. Ashcraft's computation sheets (GX 24). The only unsupported claim of back wages was for Curtis Jones in the amount of \$15.65 for alleged unpaid detour time. Mr. Jones testified at the hearing that he was in fact paid for this time (Tr. 176). Accordingly, I have subtracted this amount from the Plaintiff's calculations of back wages.

statutorily required debarment of three years. Section 5(a) of the statute specifically proscribes that the Comptroller General compile a list of violating contractors and distribute that list to all government agencies. In addition, the statute outlines that:

Unless the Secretary otherwise recommends because of unusual circumstances no contract of the United States shall be awarded . . . to any firm appearing on this list or to any firm, corporation, or partnership in which such persons or firms have a substantial interest until three years have elapsed from the date of publication
29 C.F.R. §4.188(a).

An affirmative finding of "unusual circumstances" is required under this provision guided by a three-part test outlined in the Regulations and adopted by both the Secretary and the Courts. 29 C.F.R. §4.188(b)(3); see also Habitech, Inc., 82 SCA 106, Dep. Sec'y Decision (September 18, 1987), Vol. 1, No. 5, OAA 344; A to Z Maint. Corp. v. Dole, 710 F.Supp 853 (D.D.C. 1989). The test is designed to limit the discretion to relieve violators to situations only "where the violation was a minor one, or an inadvertent one, or one in which debarment would have been wholly disproportionate to the offense." Hewette Mailer Hauler, SCA-1229 Dep. Sec'y Decision (January 19, 1989), Vol. 3, No. 1 OAA 157 (quoting House Committee on Education and Labor, Special Subcommittee Hearings on H.R. 6244 and H.R. 6245, 92d Cong., 1st Sess. 3 (1971); 29 C.F.R. §4.188(b)(2). The debarment of contractors is the norm, not the exception, and only the most compelling of justifications should relieve a violating contractor from the sanction. Vigilantes, Inc. v. Administrator of Wage and Hour Div., 968 F.2d 1412, 1418 (1st Cir. 1992).

The criteria for finding "unusual circumstances" outlined by 29 C.F.R. §4.188(b)(3) include a threshold finding that no aggravating circumstances exist which include a "willful or deliberate" violation, a violation resulting from "culpable neglect to ascertain whether the practices are in violation, or culpable disregard" of the proscribed duties. If such instances are found, "relief from the debarment sanction cannot be in order." 29 C.F.R. §4.188(b)(3)(i). If and only if there are no aggravating circumstances found, then the inquiry proceeds to compliance with express "prerequisites" for relief from the debarment sanction including "a good compliance history, cooperation in investigation, repayment of money due, and sufficient assurances of future compliance." 29 C.F.R. §4.188(b)(3)(ii). Finally, if the Respondent bridges both the threshold and prerequisite analysis, then "a variety of factors must still be considered" which include any prior investigations of the contractor for violations, any record keeping violations that may have impeded the investigation, the existence of a "bona fide legal issue," the nature of any past or present violations, and prompt payment of any sums due. 29 C.F.R. §4.188(b)(3)(ii). The Regulations conclude with the imposition of an affirmative duty on

the contractor to ensure compliance, the elimination of any burden shifting to subordinate employees or claims of simple negligence as defenses. 29 C.F.R. §4.188(b)(4),(5),(6).

In the present case, the Respondent committed willful and deliberate violations, preventing relief from the debarment provision. The Respondent instructed his employees to falsify their time sheets in order to avoid paying the prevailing wage rates (see discussion supra pp. 27-30). Despite previous instruction, the Respondent continued to improperly pay holiday and vacation benefits (Tr. 320, see also discussion supra p. 34). Finally, Respondent knowingly did not pay training wages, despite being aware of the requirement in his contract (see discussion supra pp. 34-35). These willful violations resulted in fines exceeding \$15,000.00. Even if the Respondent had shown no aggravating circumstances, the evidence does not establish that he met the express prerequisites for relief. Specifically, the Respondent's earlier violation of the Act prevents him from demonstrating a good compliance history (see discussion supra pp. 22-23). As well, the Respondent does not meet the "variety of factors" necessary for the prevention of debarment. As mentioned, the Respondent has a history of a prior investigation, being found in violation of the Act in 1987 (see discussion supra p. 22-23). Additionally, I determined that the Respondent violated the record keeping provisions of the Act (see discussion supra pp. 27-30), and that these violations impeded the investigation (see discussion supra pp. 36-39). Furthermore, there have been no bona fide legal issues presented, and the nature of the past and present violations are serious, amounting to \$25,742.54 and \$15,703.76 in fines, respectively. Therefore, I find that "unusual circumstances" do not exist to prevent debarment.

VII. ORDER

WHEREFORE, upon consideration of the entire record and for the reasons stated in this Decision, it is hereby,

ORDERED that the Respondent, Alvin Coyne, d/b/a Farmer's Trucking Company is found to be in violation of the Act and is delinquent in the payment of \$15,703.59 as follows:

Williard Allison	\$ 758.57
Timothy Ashcraft	452.59
Johnny Dean	2,311.05
Ronald Harrison	325.13
Curtis Jones, Jr.	2,293.94

Malcolm Lanier	61.44
Claude Marbrey	1,963.33
David Pierce	2,133.35
Ruth Taylor	4,323.49
Charlene Williams Robinson	1,080.70
Total	\$15,703.59

It is further,

ORDERED that the United States Postal Service release any funds withheld from the Respondent to the Secretary of Labor in satisfaction of Respondent's obligation under this order, and it is further

ORDERED that, in view of their absence of a showing of unusual circumstances, the Respondent be placed on the ineligible list.

ROBERT L. HILLYARD
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Within 40 days after the date of this decision, any aggrieved party may file a petition for review of the decision with supporting reasons. Such petition shall be submitted in writing to the Board of Service Contract Appeals pursuant to 29 C.F.R Part 8, with a copy thereof to the Chief Administrative Law Judge. The address of the Board of Service Contract Appeals is U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N6507, Washington, D.C., 20210. The Petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances which warrant relief from the ineligibility list.